New, Notable Employment Laws Signed into Law

California Association of Health Underwriters
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2016 has been exceptionally active year for labor and employment issues. Issues taken up by the state Legislature this year run the gamut from new protected leave mandates; overtime for agricultural workers; workers' compensation reform and a new state run retirement savings programs for private sector workers. Unless otherwise noted, the bills below go into effect on January 1, 2017.

AB 1676, authored by Assembly Member Nora Campos (D-San Jose), was signed by Governor Brown. *(Chapter 856, Statutes of 2016*) AB 1676 provides that a job applicant's prior salary cannot, by itself, justify any disparity in compensation. The new law, effective January 1, 2017, prohibits an employer from paying any of its employees at wage rates less than the rates paid to employees of the opposite sex for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions, except where the employer demonstrates:

- The wage differential is based upon one or more of the following factors:
  - A seniority system.
  - A merit system.
  - A system that measures earnings by quantity or quality of production.
  - A bona fide factor other than sex, such as education, training, or experience. This factor shall apply only if the employer demonstrates that the factor is not based on or derived from a sex-based differential in compensation, is job related with respect to the position in question, and is consistent with a business necessity.

The Governor signed into law **AB 2337**, by Assembly Member Autumn Burke (D-Inglewood) that mandates employers of 25 or more employees must provide written notice to employees of their rights to take protected time off for domestic violence, sexual assault or stalking. The protected leave, in this instance, is existing law. This new law adds a new notice requirement where employers must inform each employee of his or her rights to take this protected leave upon hire and at any time thereafter upon request by the employee. The Labor Commissioner will develop a form for the notices by July 2017. *(Chapter 355, Statutes of 2016),*

Governor Brown has signed **AB 2535**, authored by Mark Ridley-Thomas (D-Los Angeles) that sets in statute an important clarification that an employer must only track the hours worked and record those hours on an itemized wage statement for hourly, non-exempt employees.

This ensures that employers do not have to track and record salaried exempt employee hours. *(Chapter 77, Statutes of 2016)*

SB 1001 by Senator Holly Mitchell (D-Los Angeles), signed by Governor Brown, adds new legal liabilities for employers. The new law does so by making it unlawful for an employer, in the course of satisfying specified work authorization requirements of federal law, to request more or different work authorization documents than are required under specified federal law or to refuse to honor documents tendered that reasonably appear to be genuine from a job applicant. This means that an employer may not ask a worker to prove their eligibility to be hired with any document (i.e., a U.S. passport, permanent resident card, employment authorization document, or social security card), other than are required by current federal law. Employers would also be prohibited from attempting to reinvestigate or re-verify a current employee's authorization to work. If anyone is found to have done any of the above, they will be subject for up to a $10,000 penalty imposed by the Labor Commissioner and liability for equitable relief. *(Chapter 782, Statutes of 2016)*

SB 1063 by Senator Isadore Hall (D-Compton) was also signed by Governor Brown. The new law amends the Equal Pay Act to prohibit employers, beginning January 1, 2017, from paying employees a wage rate less than the rate paid to employees of a different race or ethnicity for substantially similar work. *(Chapter 866, Statutes of 2016).*

A new set of worker's compensation system reforms was quietly negotiated between management and labor representatives over the last several months of the 2015-2016 legislative session. The Governor signed the bi-partisan package, including **SB 1160** by Senator Tony Mendoza (D-Artesia) *(Chapter 868, Statutes of 2016)*, **AB 1244** by Assembly Member Adam Gray (D-Merced) *(Chapter 852, Statutes of 2016)* and **AB 2503** by Assembly Member Jay Obernolte (R-Big Bear Lake) *(Chapter 885, Statutes of 2016)*. The Administrative Director (AD) of the Division of Workers' Compensation (DWC) will be issuing regulations over the next several months to implement these reforms. The Workers' Compensation Insurance Rating Bureau, as a result of the new laws, has recommended a 4.3 percent drop in 2017 employer premiums as part of their pure premium rating filing.

To put the package in context, today California law requires all employers to create a utilization review (UR) process as part of their workers' compensation. UR is the review process for medical treatments by physicians to determine if the treatment is medically necessary. Over all, the package does the following:

- ✓ Prohibits prospective UR within the first 30 days of treatment for treatment provided through a medical provider network (MPN).
- ✓ Makes exceptions for surgery, medications not covered by the workers' compensation drug formulary, psychological treatment, most durable medical equipment and home health services.
- ✓ Allows for retrospective UR to ensure a doctor is complying with the Medical Treatment Utilization Schedule (MTUS) and if a pattern develops of a doctor failing to do so, an employer can remove the doctor from their MPN.
- ✓ Requires any UR organization to obtain accreditation from an accrediting entity specified by the Division of Workers' Compensation.

- ✓ Requires the Administrative Director to develop a mandatory electronic system for sharing documents necessary to conduct UR.
- ✓ Provides that the MTUS may be updated with evidence-based medicine standards by an expedited process.
- ✓ Requires a lien filer to specify in the lien filing the basis upon which the lien is authorized.
- ✓ Prohibits the assignment of liens unless a person has ceased doing business in the capacity held at the time the expenses were incurred and has assigned all right, title, and interest in the remaining accounts receivable to the assignee. The assignment of a lien, in violation of this paragraph is invalid by operation of law.
- ✓ Requires the DWC AD to bar medical service providers from participating in any capacity in the workers' compensation system if the provider has been convicted of fraud or abuse of the Medi-Cal, Medi-Care or workers' compensation system or has been convicted of a felony
- ✓ Requires a treating physician to file requests for authorization of treatment with the appropriate entity.

The Governor signed **SB 1167** by Senator Tony Mendoza (D-Artesia) that orders the California Division of Occupational Safety and Health Administration, (Cal/OSHA), by January 1, 2019, to propose to the state Occupational Safety and Health Standards Board, a heat illness and injury prevention standard applicable to workers working in indoor places of employment. The bill does not prohibit the division from proposing, or the standards board from adopting, a standard that limits the application of high heat provisions to certain industry sectors. *(Chapter 839, Statutes of 2016)*

One of the most significant employment related legislation is **SB 1234**, by Senate President Pro Tem Kevin DeLeon. SB 1234 was signed by Governor Brown. The new law establishes the Secure Choice Retirement (SCRSP) program for all covered private sector employees. The provisions of SB 1234 mandate the creation of savings accounts for covered workers whose employers do not offer a pension, 401(k) or other retirement savings option to be automatically enrolled. The program will be phased in over a 36-month period and overseen by the new Secure Choice Retirement Savings Investment Board.

- ✓ Within 12 months of the program opening for enrollment, employers with more than 100 employees and no retirement savings plan must help their employees to automatically enroll their employees that do not opt out of the program.
- ✓ Employers with 50-99 employees would have 24 months to enroll workers; and
- ✓ Employers with 5-49 employees would have 36 months.

Other key provisions of SB 1234 are:

- o Employees have the right to opt out of the program.
- o Allows the Board, unless otherwise specified by the employee, to set the initial employee contribution into the SCRSP between 2% and 5% of their gross wages.
- o Employers always retain the right to provide their own employer-sponsored retirement plans in lieu of SCRSP.

- The SCRSP Board may implement annual automatic escalation of employee contributions of up to 8%, but contribution level cannot rise more than 1% in a year.
- An employee may opt out of automatic escalation and set his or her contribution rate at a level determined by the employee.

In conclusion, employers will need to keep abreast of the Governor's action on the legislation above. Most of the new laws noted above will require employers to change their employment handbooks or provide new notices to employees about the changes in law.

More information on the specific language in these bills can be found at http://www.cahu.org/action-center or by clicking on the bill numbers above.

Employers are also advised to talk to their HR specialists or attorneys in order to ensure their employment policies, procedures, training and notices meet the standards set by the new laws.

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